

THE DISPENSARY LAW.

JUDGE WALLACE DECLARES IT TO BE CONSTITUTIONAL.

The Anderson liquor case made the occasion of a striking judicial delivery—Technical Objections to the Pharmacy of the Act Dismissed.

ANDERSON, Nov. 8.—In the case of the State vs. John D. O'Donnell, indicted for selling whiskey without a license and keeping a place where whiskey is kept for sale, etc., which was called in the Court of Sessions Wednesday, Judge Wallace rendered orally the following decision, on motion of the defendant's counsel to quash the indictment:

The question as to the constitutionality of the Dispensary Act has been much discussed in the State, and has developed considerable diversity of opinion in regard to it. Some able and learned lawyers hold one opinion and others equally as learned hold a different opinion. I have my own opinion, which I will proceed to announce without hesitation or delay. The motion was to quash the indictment, because the Act provided no punishment for selling liquor without a license. I may say in passing that the words "without a license" contained in the first count are mere surplusage, and that the offence charged is that of selling liquor.

At common law crimes are divided into two classes, namely, mala in se and mala prohibita. To illustrate: We have a statute declaring murder to be a crime or rape or arson or burglary. These crimes are described and punished. The offence charged in the indictment is a crime prohibited by statute. It belongs to the class of mala prohibita. The commission of an act prohibited by statute is an offence, because it is a violation of law. The offence charged is prohibited by the Dispensary Act and thus to sell liquor becomes a violation of the law and is therefore an offence.

No offence created by statute is a felony unless it is so declared. Therefore the selling of liquor in violation of Section 6 of the Dispensary Act is a misdemeanor and is punishable, if not by a penalty provided in said Act, then under the provisions of the statute, Section 2,653, Revised Statutes. "Section 2,653. In cases of legal conviction where no punishment is provided by statute the Court shall award such sentence as is conformable to the common usage and practice in this State according to the nature of the offence and not repugnant to the Constitution."

I am, therefore of the opinion, and so hold, that the offence charged is punishable under the section I have just quoted.

The next ground was that Section 21 of the Dispensary Act, under which the indictment is framed, relates only to the sale or distribution of liquors kept by clubs or associations. For the use of members. The section referred to reads as follows: "Section 21. Every person who shall directly or indirectly keep or maintain by himself, or by associating or combining with others, or who shall in any manner aid, assist or aid in keeping or maintaining any club room or other place where any intoxicating liquors are received or kept for the purpose of barter or sale, as a beverage or distribution or division among the members of any club or association, by any means whatever, and every person who shall barter, sell or assist in the barter, sale or distribution or selling any intoxicating liquors so received or kept, shall be deemed guilty of a misdemeanor and upon conviction thereof be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail for not less than ninety days, nor more than one year." It is clear that this section does not confine its provisions to clubs and associations, but includes the receiving and selling of liquor in any "other place."

The third and last ground, and the main ground is that the Dispensary Act is unconstitutional, and the argument under this branch is concerned chiefly with the purpose of the Act and the question as to the police power of the State.

There seems to be some confusion regarding the distinction between the Federal Constitution and the State Constitution. They are essentially different in their nature. The Constitution of the United States confers upon Congress certain well defined powers, and such other powers only as are necessarily implied from such grant, and when an issue arises as to the constitutionality of an Act of Congress the question is, "has the power to legislate on the subject matter of the Act been granted to Congress by the Federal Constitution?" On the other hand the Constitution of South Carolina bestows general legislative power upon the General Assembly with very few limitations, and therefore as upon an issue regarding the constitutionality of an Act of the General Assembly of the State the question is "has the power to legislate upon the subject matter of this Act been withheld by the State Constitution?"

On this point I have here an excellent authority which I shall read: "The people of a State in creating by their organic law a legislative department, of government, confer upon it the whole of their inherently sovereign and unconfined power of legislation, except in so far as they have delegated this power in respect to certain subjects and under certain restrictions to the Congress of the United States, and except also in so far as they contemporaneously impose checks and limits upon the legislative power of the State." Hence the Legislature of a State may enact any law, (not infringing upon the other departments) of any character or on any subject unless it is prohibited in express terms or by necessary implication in the Constitution of the United States or of the State. In other words the constitutions are to be considered as limitation upon the legislative power of the State, not as grants of power (3d Am and Eng Encyclopedias, Vol. 4, 689).

In note 2 to the above quotation occurs the following: "The distinction between the United States Constitution and the State Constitution is that the former confers upon Congress certain specified powers only, while the latter confers upon the Legislature all legislative powers. In the one case the powers specially granted can only be exercised, in the other all legislative powers not prohibited." Citing People vs. Flagg, 46 N. Y., 401; Page vs. Allen, 58 Pa. St., 338.

Applying the doctrine just quoted, which must be recognized as sound doctrine, the unconstitutionality of the Dispensary Act must be made to appear from some limitation contained in our State Constitution itself upon the power of the General Assembly to enact such a law.

No such limitation has been pointed out nor am I aware of any such limitation, either express or implied. Even if the power of the General Assembly to enact the dispensary law could be derived only from its police power there can be no question that under that power it would have ample authority to restrict the sale or traffic in liquor. The State has frequently done so in the past by statutes intended to regulate and restrict the traffic in liquor without question as to its right and authority to do so.

THE HAMPTON LETTER.

WHAT THE GREENVILLE NEWS HAS TO SAY ABOUT IT.

There is No Use and Great Danger in the Movement—The White People of the State Cannot Afford to Divide.

GREENVILLE, S. C., Nov. 8.—It is better to make open and full confession. A man's sin will find him out and when he is caught he had best own up. We find the Columbia Register and the State from opposing standpoints calling on the Greenville News to speak out on the matter of the organization of national Democratic clubs in this State as suggested by General Hampton in a letter to the State published in this newspaper last week. Four out of five important Democratic daily newspapers of South Carolina have spoken in favor of the scheme and "where is the Greenville News?" says the State. "Why this strange silence of the Greenville News?" demands the Register.

Well, the truth of it is the editor of the Greenville News ran away last week. When his esteemed contemporaries were calling upon him for delivery of the State, the organization of national Democratic clubs he was sitting on a log in the woods on the side of a mountain in Western North Carolina. It was glorious, too. A sky of wonderfully deep blue flecked with still strips of transparent white cloud; the dreamy haze of the Indian market; air so crisp, so deliciously and delicately perfumed with the aromatic suggestions of pine trees and hickory leaves that every breath of it was long drawn luxury. There were few sounds to disturb the silence, save the rumble down in the darkened gaves, and splashed idly and faintly and momentarily glints of the clear water flashing now and then as the thickly clustered, deep green laurel swayed noiselessly in the dry leaves, rustled slowly as they drifted down through the trees as if lingering to say good-bye to the companions that had swung and rustled with them while all of them were green and beautiful through the sunshine and breeze of the dead, bright autumn. Now and then a squirrel, with his tail held high and his feet tucked under him, came scurrying through the leaves. There was a riot of color everywhere—crimson, scarlet, brown, yellow, greens, and bluish-brown, gorgeous varieties and blendings.

With a dinner of mountain made honey and fried chicken, preceded by a taste of something which had never yielded any of its sturdy strength to the necessary hands of a dispensary agent, and succeeded by a brandy of a ridge or two and a briar wood pipe filled with tobacco like flakes of gold, the blue smoke of which drifted and curled slowly away to mingle with the colored haze of the autumn air, that and be profound, indifferent to politics, commerce and finance and all cares and concerns, past, present and future, public and private, content simply to be living and enjoying with the general sensation that this is a pretty fair sample of a world after all. He could idle there with idleness made delicious by the fact that he had been working from fourteen to eighteen hours a day without a break a number of months, and allow a mind which is usually struggling to consider and remember things at once to be so magnificently vacant as to decline to remember whether the right or left hand barrel was loaded with buckshot, and to accept of cheerful lack of purpose the possibility of having an unhappy squirrel into rags or a snake creeping the impervious feathers of a turkey with No. 6. Add to all this the delightful sense of wrongdoing, not so acute as to be uncomfortable, but just strong enough to give zest to the occasion. The splendid opportunity of having run away without asking leave or license of anybody, after writing advance editorials to be cut off and dumped into holes in the columns like packing and Hable to be inappropriate comments, and seemed contemporaries can understand how he might have to be envious of and how glad the editor of the Greenville News is that he ran away, even if he did return in suspension of lodging. Two or three days of absolute conformity and difference and peace are worth taking some chances and suffering some serious penalties for.

This newspaper would do nearly anything for General Hampton and would give its heart out to serve him because he is well worthy of all the honor and love this State can give him. It has a very strong brotherly affection for its contemporaries with whom it has fought shoulder to shoulder in a weary regular men fight for what it believes to be right. We can not believe the motives of General Hampton and our contemporaries are right, but their judgment in this matter in our view altogether wrong. In the proposition for the organization of a "national Democratic party" in this State run by the present Democratic organization we see much evil and no good.

It means, so far as we can understand, a split among the white people, which is the calamity most of all calamities to be dreaded and resisted. Some 35,000 men might be organized as national Democrats, but would yet be a majority of 10,000 against them. If a majority of the white people can be organized as national Democrats there is no need for the organization because they can win in the regular primaries. We can not get a minority without calling in the help of the black vote. The Greenville News would rather have Tillman Governor for ten or fifteen years by white votes than to have a government composed entirely of men of its own selection chosen by the help of colored voters. So long as white men rule, however serious or expensive their errors may be, there is always hope of improvement, always a time to look to when common sense and conscience will bring a change for the better. Experience has taught us that when the colored vote rules or is influential the matters steadily become worse for the whites. While ever race has control will use its power for its own interests and the interests of the two races here are sharply opposed in very many respects. We have the kindest feelings for the colored people but we do not

OUR CONGRESSMEN.

HOW THEY STAND AS REGARDS BUTLER AND TILLMAN.

Some Interesting Gossip About South Carolina Representatives in Congress—Senators Butler and Irby Not in Favor With President Cleveland.

WASHINGTON, Nov. 8.—The first chapter in the history of the political events in South Carolina so far as they are affected by what has been done or is doing in Washington, ends with the close of the extra session, and we can form some opinion now as to the drift of events. It has been known for some time that one of the most important factors in the next political contest in that State would be the contest between Governor Tillman and Senator Butler for the United States Senate, and much of that has been going on here has had more or less bearing upon that contest.

Senator Butler at the beginning of this Administration from his long record and personal popularity had a very potential influence in securing offices for his friends, and these appointments were made apparently without regard to any influence upon South Carolina's politics. Senator Irby does not seem to have succeeded in making any favorable impression and his late course in practically allying himself with the most bitter opponents of the Administration has, of course, destroyed any possibility of his doing anything in the direction of getting against Mr. Tillman. Since Senator Butler has cast in his lot with the enemies of the Administration on the silver question he has naturally weakened the claim which otherwise he would have held that he would secure the appointment of Mr. Irby as collector of internal revenue the chances of Mr. Perry's appointment seem to have very much diminished.

I think that in all appointments of this nature it will be the policy of the Administration to put in office men whose fidelity to Democratic principles as interpreted by the Democratic Administration leaves no room for question. In all such appointments it seems likely that the opinion of Congressman Butler will be influential, as his views on public questions are in almost perfect accord with those of the Administration, and it cannot be charged against him, as it has been against many who now stand by President Cleveland, that his views have been applied in the matter of securing public patronage, as he stands in precisely upon the ground that he occupied long before the nomination or election of President Cleveland. So far as the public offices are concerned, therefore, the Administration will put on guard none but Democrats of unquestionable integrity, politically and otherwise.

The attitude of the different members of Congress from South Carolina towards the Administration is so complicated. It will be remembered that early in the spring there were several interviews between members of the delegation and the Postmaster General on the subject of the postoffice appointments. All the members of Congress from South Carolina participated in these interviews, except Mr. Brawley and Mr. McLaurin, who were not present thereat. The most determined fight seemed to be made by Senator Butler, who is the author of the May resolutions, and he was a good target. Of all that has been said and done with respect to the post-offices in his district it would probably be impossible to tell the story. It was found that a number of the men who were recommended for the offices were charged with being Populists, and it seems that the question as to his right to control these appointments was never finally settled against him until within the last few weeks, when the publication of his letter in the Columbia Register seems to have given him a coup de grace.

Mr. Strait seems to be practically in the same boat, as Mr. Latimer and himself seem to have taken occasion more than once while in South Carolina to proclaim their hostility to the Administration. Mr. Shell seems to have no difficulty practically in securing the appointments of such postmasters in his district as he has recommended. He has adopted the policy generally of recommending parties who are acceptable to all such parties as he served, and in all such cases his recommendations have gone through without question, and the same is true to a large extent with respect to Mr. Talbert; and lately appears that Mr. McLaurin is in the same boat with the two last named Congressmen. Senator Butler has endorsed all the recommendations of Messrs. Shell, Talbert and McLaurin as postmaster of Darlington has caused a great deal of comment here as it seems to indicate some sort of an alliance between Senator Butler and Mr. McLaurin but it may be that it has no significance which has been given to it. It is said that Waddill is now a Butler man though originally a Tillmanite. As it appears to be an outsider, it would not seem that in so far as the postoffice appointments are concerned there are some grounds for the belief that there is some understanding of a friendly nature between Senator Butler and Messrs. Shell, Talbert and McLaurin. Time will show what this arrangement means.

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RECEIVED WITH SURPRISE.

What is Said About Our Defeat in Washington.

WASHINGTON, Nov. 8.—The result of the election has been received with surprise by all political parties here. The unexpected happened in so many instances, that in no case were the predictions of Democrats, Republicans or Populists verified. The chief surprise of the Democrats arises not from the fact that they were defeated, but that the defeat was so general in all doubtful states, and the Republican majority is so overwhelming. A grain of comfort is accorded them in the defeat of the Populists in Virginia, and the election of O'Ferrall to the governorship, but the blows have been so crushing in the states of New York, Massachusetts, New Jersey, Ohio and Iowa that even the success in Virginia is hardly paraded as a triumph. Expressions from nearly all the prominent Democratic leaders at the Capitol, as indicated in these dispatches several days ago, showed that the Democrats were prepared for defeat in those states where the free coinage element is strong and the disappointment over the passage of the repeal bill is intense, but it was hardly expected that in the "sound money" states of New York and Massachusetts the Democratic majority of the past would be so ruthlessly mowed down and the careful efforts of perfect organization avail so little. Despite this, however, all the prominent Democratic leaders are ascribing the general defeat throughout the country to the dissatisfaction of the agricultural classes over the financial question, and the widespread apathy of disappointed office seekers who have failed to realize the fruits of the last Democratic victory. In the state of Ohio alone, was the tariff question the prominent theme of discussion, McKimley and Neal so emphatically repeating the declarations of their parties in this respect. But here, too, the Democrats are routed by the same excellent Republican majorities, and the defeat of Biles is important, not that it means a Republican governor in that state and a Republican United States senator next winter but that it practically removes Boies from the list of Western candidates for the Presidency in '96. The judgment of the party leaders here approved the first declaration of Governor Bryan's "last summer, that he would not be a candidate for governor at the fall election, and when he finally reconsidered and came out in the race for a third term, it was felt that he had everything to lose and little to gain from the campaign that was to follow. It was recalled that even the popular Foraker was unable, in Ohio, to stem the popular sentiment against a third term, and when the Republicans of Iowa reproached the Democrats with departing from one of the cardinal principles of their party in nominating a man for a third term, they presented their opinions of the defensive practically from the very beginning. The Populists still contend that later returns will show that their party has made a far better showing in various states than is conceded them in the earlier dispatches.

In Virginia they succeeded in terrorizing the Democrats for the last two weeks, but the leaders of the latter party called from their panic in time to make unprecedented efforts to get out their full vote, and it looks as though the Populists would have stood a much better chance for victory by making a still fight.

The Populist senators and Republicans who are in the city, are anxiously watching the latest news from Nebraska and Kansas, and expect cheerfulness from the official returns. There is one element of defeated Democrats that reviews the general Republican victory with a philosophical resignation that amounts almost to satisfaction. This element comprises the free coinage Democrats who have so bitterly reproached President Cleveland for forcing the repeal bill through Congress, and who for weeks have been predicting that the administration's disloyalty to the Democratic National platform would be rebuked by a crushing defeat in the great states' elections this fall. These men now point to the Democratic defeat as the result of the party's departure from its faith in the recent extraordinary session, and are already preparing to coax the majority back to the good old orthodox faith when the regular session convenes in December.

Chairman Bland will introduce his free coinage bill at the first bill day of the session, and the free coinage men are expected to make a unit in demanding its prompt consideration. The President did not show that intense interest in the returns last night that would have indicated a confidence in Democratic victory. Early in the evening the President went out to his country home instead of remaining at the executive mansion, as is usual on election nights, and the returns he received were only those of sufficient importance to be telephoned out to Woodrow. Private Secretary Thurber, as the latter received them from the telegraph wires, he called to the attention of several members of the Cabinet. Several members of the Cabinet drove out to the President's cottage in the evening, but none of these gentlemen have so far given any expression of the causes that led up to the general defeat.

The President was doubtless discouraged by the Democratic defeat as he has constantly repeated to those members of his party who have been predicting Democratic defeat as the result of the administration financial policy, that they would vindicate their party and show that the majority was right in demanding the immediate and unconditional repeal of the Sherman act.

SEARCHING FREIGHT CARS. CHARLESTON, S. C., Nov. 10.—In behalf of the State constables, Mr. Whaley has just procured orders from the United States court granting authority to search two cars on the tracks of the South Carolina railway, suspected of containing liquor. This makes the eighth seizure since last Friday. All liquor captured in that time is worth probably \$1,600.

DISOBEYED ORDERS. TOLEDO, O., Nov. 10.—Four persons were killed in a collision near Bradnor, Ohio, twenty-four miles from here, last evening on the Columbus, Hocking Valley and Toledo railroad. The eastbound Columbus express, which left at 5:20 p. m., crashed into a north-bound freight in a dense fog. The dead are: L. H. Jones, engineer of the passenger train; Eremann Jones, of the passenger train; James R. Gresh, express messenger on passenger train; Eugene Kernin, of the freight train. Trainmen disobeying orders was the cause.